

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal no. 24 of 2013 & IA no. 39 of 2013

Dated: 25th April, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

Indian Wind Energy Association, Through its Secretary,
PHD House, 3rd Floor,
Opp. Asian Games Village,
August Kranti Marg,
NEW DELHI-110 016

... **Appellant**

Versus

1. **Gujarat Electricity Regulatory Commission**,
Through its Secretary,
1st Floor, Neptune Tower,
Opposite Nehru Bridge,
Ashram Road,
Ahmedabad-380 009
Gujarat, India.
2. **Gujarat Energy Development Agency**,
4th Floor, Block No. 11 & 12,
Udyog Bhavan,
Sector-11,
Gandhinagar-382 017
Gujarat, India.
3. **Gujarat Urja Vikas Nigam Limited**,
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodra-390 007,
Gujarat, India
4. **Madhya Gujarat Vij. Co. Ltd.**,
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara-390 007, Gujarat.

5. **Dakshin Gujarat Vij Co. Ltd.,**
Kapodara Char Rasta,
Surat-395006, Gujarat
6. **Uttar Gujarat Vij Co. Ltd,**
Corporate Office,
Mehsana-Visnagar Highway,
Mehsana-384 001,
Gujarat, India
7. **Paschim Gujarat Vij Co. Ltd,**
Nanamava Road,
Laxminagar,
Rajkot-360 004,
Gujarat, India
8. **Torrent Power Limited, Ahmedabad,**
Torrent House,
Off. Ashram Road,
Ahmedabad-380 009,
Gujarat, India
9. **Torrent Power Limited, Surat,**
Electricity House,
Station Road, Surat 395003
10. **Kandla Port Trust,**
Nisomess Development Cell,
P.O. Box No. 50,
Administrative Building,
Gandhidham,
Kutch (Gujarat)-370 201
11. **MPSEZ Utilities Pvt. Ltd.,**
Adani House,
Near Mithakhali Circle,
Navrangpura,
Ahmedabad-380 009,
Gujarat, India
12. **M/s. Jubilant Infrastructure Pvt. Limited,**
24-25/39-40, 1st Floor,
Shri Rang Palace, Rang Multiplex,
Zadeshwar Road,
Bharuch-392 012

13. **M/s. Synefra Engineering & Construction Co. Ltd.,**
Survey No. 26, Village Pipaliya,
Taluka Waghodia,
Distt. Vadodara-391 760
Gujarat, India

14. **M/s. Torrent Energy Limited,**
Dahej SEZ, Dahej-392 130,
Gujarat, India

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.,
Mr. Hemant Singh,
Ms. Shikha Ohri
Mr. Anurag Sharma

Counsel for the Respondent(s) : Ms. Suparna Srivastava with
Mr. S.R. Pandey (Rep.) for R-1
Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R. 3, 8 & 9
Mr. M. Deliwala (Rep.) for R-11
Mr. Mehul Rupeece for R-12

JUDGMENT

RAKESH NATH, TEHNICAL MEMBER

The present Appeal has been preferred by the Indian Wind Energy Association against the order dated 17.8.2012 passed by the Gujarat Electricity Regulatory Commission (“State Commission”) in a *suo-motu* Petition no. 1219 of 2012.

2. The Appellant is an Association of wind energy generators. The State Commission is the Respondent no. 1. Gujarat Energy Development Agency, the nodal agency of the Government of Gujarat for development of renewable energy sources in the State is the Respondent no. 2. Gujarat Urja Vikas Nigam Ltd. (“GUVNL”) the holding electricity company and procurer of bulk power on behalf of the distribution licensees is the Respondent no. 3. Respondent no. 4 to 14 are the distribution licensees.

3. The brief facts of the case are as under:

a) The State Commission issued the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 specifying the Renewable Purchase Obligation (‘RPO’) of the distribution licensees and other obligated entities in the State, hereinafter referred to as “RPO Regulations.” The Regulations specified the RPO

Regulations separately for wind, biomass/ baggase and others and solar.

- b) On 20.4.2012, the State Commission initiated *suo motu* proceedings and issued notices to the Respondents excluding the wind energy generators regarding compliance of the RPO Regulations.
- (c) The State Commission passed the impugned order dated 17.8.2012 revising the RPO targets for FY 2010-11 from the levels prescribed in the RPO Regulations and further ordered to carry forward the shortfall in procurement of renewable energy during FY 2011-12 to FY 2012-13. Also, any excess procurement of solar energy by the distribution licensees during FY 2012-13 was also allowed to be adjusted against the fulfillment of Non-solar RPO for that financial year.
- (d) Aggrieved by the impugned order dated 17.8.2012, the Appellant has filed this Appeal. As FY 2010-11 to 2012-13 are already over, the only

grievance left with the Appellant is the imposition of penalty for non-fulfillment of RPO targets as specified in the RPO Regulations and giving directions to the State Commission for future.

4. Some of the Respondents raised the objection that the Appeal is not maintainable. We have therefore, heard the Appeal both on maintainability and merits.
5. The Appellant has made the following submissions:
 - a) The Appeal is maintainable under Section 111 of the Electricity Act, 2003. The Appellant Association is a registered organization and members of the Association are the wind energy generators, some of which are operating in the State of Gujarat. The Members of the Association are aggrieved by the impugned order.
 - b) The State Commission has passed the impugned order which has an impact upon the wind power generators

- even without hearing the wind energy stakeholders. No hearing notice was issued to the Appellant or any wind/renewable energy stakeholders. The same is against the express provisions of the Regulation 24 of the Conduct of Business Regulations 2004. Thus, the State Commission has erred by allowing the relaxation in RPOs to the distribution licensee at the cost of wind energy generators, without hearing the said generators in violation of principles of natural justice.
- c) The impugned order has been passed allowing carry forward of RPO targets for FY 2011-12, despite categorical findings of the State Commission that Renewable Energy Certificates (“REC”) were available. This is not in consonance with the RPO Regulations which specify REC as a mechanism to fulfil the RPOs of the distribution licensees.
- d) The State Commission while relaxing/carrying forward the RPO targets did not impose any penalty as

- stipulated in RPO Regulations even after categorical finding that GUVNL and other licensees did not take any imitative for processing RECs in the FY 2011-12.
- e) The State Commission has allowed excess solar energy procured by the distribution licensees to be used to fulfil the shortfall in non-solar RPO. Excess procurement of solar energy procured or solar RECs cannot be used to fulfil the non-solar RPO since the Regulations do not permit the same. The Regulations only provide for fulfillment of Solar RPO by non-solar RPO in case minimum quantum of power from solar is not available in a Financial Year. The Regulation is silent about adjustment of excess energy purchased from solar energy during the year to be considered for fulfillment of RPOs specified for wind and other renewable energy.
5. The reply submissions made by GUVNL are as under:

- a) The Appeal is a clear abuse of the process of court and an attempt made by the wind power developers to seek orders when shortfall in the purchase of wind power by the Respondent no. 3 was entirely on account of wind power developers not willing to sell power to the Respondent no. 3 at the promotional tariff determined by the State Commission under Section 86(1)(e) of the Electricity Act, 2003. Thus, there is lack of bonafide on the part of the Appellant to seek reliefs against the Respondent no. 3 for non-purchase of Renewable Energy Certificate when the circumstances leading to the shortfall have been brought about by the wind power developers themselves.
- b) There is no provision in the Electricity Act, 2003 for purchase of Renewable Energy certificate ('REC'). The promotion of renewable sources of energy is recognized by imposing a RPO being a percentage of the total consumption of electricity in the area of

- distribution. The State Commission can impose RPO only if there is availability of renewable sources of energy in the State. It is well settled that an authority cannot impose an obligation which is impossible to perform.
- c) If the Wind Power Developers chose not to offer to supply their generation of electricity to the Distribution Licensees and adopted other means to dispose of the generation of electricity, the Distribution Licensees cannot be said to be in default. The alternative opportunity available to the Wind Power Developers to sell generation to others on the expectation of net aggregate higher price than the promotional tariff decided by the State Commission for wind energy cannot be used by them to secure financial advantage by compelling the Distribution Licensees to purchase wind energy REC.

- d) REC is an option available to the Distribution Licensees under the RPO Regulations but they cannot be compelled to purchase REC since it is a commercial decision of GUVNL.
- e) The State Commission has power to relax the RPO if the circumstances so warrant. The State Commission also has the authority to adjust the percentage of RPO from wind power based on availability. The plenary action of the State Commission to adjust the percentage of RPO is not open to challenge by the Wind Power Developers, particularly when they had chosen to adopt other alternative for sale of quantum of power generated by them. The shortfall in meeting RPO in FY 2010-11 and 2011-12 was on account of non-availability of adequate capacity of RE sources and there has been no default or failure on the part of the Respondent no. 3 or the distribution companies.

f) Gujarat Urja Vikas Nigam Limited, the Respondent no. 3 has signed PPAs with aggregate capacity of 971.5 MW for various solar power projects out of which 601 MW capacity was commissioned just before 31.3.2012. Further the balance 370.5 MW was likely to be commissioned during FY 2012-13. Thus, purchase of power from solar projects during 2012-13 was much higher (almost three times) the Solar RPO stipulated in the RPO Regulations from FY 2012-13. Since power from wind power projects was not available even though the Respondent no. 3 tied up the entire capacity of RE sources whomsoever came forward to sign PPA, the Respondent no. 3 could not meet the wind RPOs. The purpose of fixing RPO is that renewable sources of energy should be promoted. If in a certain State, there is more scope for one type of renewable power and the developers are willing to enter into PPA, the Respondent no. 3/Distribution licensee would be free to

- tie up the same. Therefore, the State Commission has correctly adjusted the excess solar energy against non-solar RPO.
- g) REC is a national level market mainly meant for the States, where renewable sources are not available to have some proportion of RPO. Thus, the Respondents can neither be responsible for unsold RECs nor can be compelled to fulfil RPO through REC mechanism.
6. The Respondent no. 8, 9 and 11 have made similar submissions on merits of the case. Besides, they have also objected to the Appeal on the ground of maintainability as the Association is not a person or company engaged in the Wind Power Generation. According to them, the Appellant is not an aggrieved person within the meaning of Section 111 of the Electricity Act, 2003. Further, according to the Respondents 8 & 9, the RPO Regulations do not envisage participation of the Appellant before the State

- Commission pertaining to the decision on the issue regarding revision of RPO targets for a year or in regard to the extent of fulfillment.
7. The State Commission has filed written submissions in support of its findings in the impugned order.
 8. We have heard Mr. Sanjay Sen, Learned Senior Advocate representing the Appellant, Mr. M.G. Ramachandran and Ms. Swapna Seshdari, learned counsel for the Respondent nos. 3, 8 and 9 and Ms. Suparna Srivastava, learned counsel for the State Commission on the above issues.
 9. On the basis of rival contentions of the parties, the following issues arise for our consideration:
 - i) Whether the present Appeal filed by the Indian Wind Energy Association is maintainable against the impugned order of the State Commission allowing

- certain relaxations in RPO obligations of the distribution licensees with respect to the RPO Regulation?
- ii) Whether the State Commission has erred by not giving public notice in the *suo motu* proceedings initiated to review the compliance of RPO of the distribution licensees thus acting against the principles of natural justice?
 - iii) Whether the State Commission has erred by revising the RPO for FY 2010-11?
 - iv) Whether the State Commission has erred in allowing carry forward of the shortfall in procurement of renewable energy for the FY 2011-12 to FY 2012-13 despite holding that the distribution licensees did not take initiative to purchase Renewable Energy Certificates?
 - v) Whether the State Commission has erred by not imposing penalty as stipulated in the RPO Regulations

on the distribution licensees for failure to fulfil the RPO obligations as specified in the Regulations?

- vi) Whether the State Commission was correct in adjusting the excess solar energy procured by the distribution licensees against the non-solar RPOs for FY 2012-13?

10. Let us take up the first issue regarding maintainability of the Appeal.

11. According to the Respondents 8 and 9, the Appellant is an Association and not a person or company engaged in wind power generation. Thus, the Appellant is not an aggrieved person within the meaning of Section 111 of the Electricity Act, 2003 to file this Appeal.

12. According to the Appellant, it is a registered organization and some of its members are the

- generators of electricity from wind energy who are affected by the impugned order.
13. According to Section 111 of Electricity Act, 2003 any person aggrieved by an order made by an adjudicating officer under this Act (except under Section 127) or an order made by the Appropriate Commission under this Act may prefer an Appeal to the Appellate Tribunal for Electricity. Section 2 (49) defines “person” to include any company or body corporate or association or body of individuals, whether incorporated or not or artificial juridical person.
 14. It is not disputed that the Appellant Association is a registered body which has members who are wind energy generators some of which are located in the State of Gujarat and are aggrieved by the impugned order.

15. This issue has already been dealt with by this Tribunal in the judgment dated 5.4.2011 in Appeal no. 148 of 2010 in the matter of South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors. as under:

“24. The first objection of the Respondent No. 1 to 6 that the appeal is not maintainable on the ground of it not having been preferred by any individual and the association of sugar factories does not have locus standi to prefer the appeal against the order for determination of tariff for the co-generation units attached to those factories is itself not maintainable in view of the fact that the appellant undisputedly is a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued. As we find from Annexure B, C and D of the memorandum of appeal, the association has 30 members having sugar mills in Karnataka, and the sugar factories with cogeneration units in Karnataka are 34 in numbers. In terms of the resolution of Committee the Secretary of the Association has been duly authorized to present this

appeal. The appeal has been preferred thus by a registered body in its representative capacity to urge therein common view points. It is not an unregistered body, not are the members obscure and uncertain. The objection is thus repelled.”

16. The findings of the Tribunal in the above judgment will apply to the present case also. The Appellant is a registered organization. The Appellant has also filed the supporting documents regarding its registration, list of members, including those operations in Gujarat who are aggrieved by the impugned order. Accordingly, we hold that the Appeal filed by the Appellant Association, as an aggrieved person is maintainable.
17. **The second issue is regarding passing of the impugned order without any hearing notice.**
18. According to the Appellant the State Commission should have heard the Appellant and wind

energy/renewable energy generators before passing the impugned order which has affected them. This is also contrary to the provisions of the Conduct of Business Regulations, 2004.

19. According to the Respondent Utilities, RPO Regulations do not envisage the participation of the Appellant or any other person before the State Commission pertaining to the decision on the issue of revision of percentage targets for the year or in regard to the extent of fulfillment. The Regulation 24 of the Conduct of Business Regulations, 2004 gives the discretionary powers to the State Commission for issuance of notice.
20. We find that the Regulation 6 of the Procurement of Energy from Renewable Sources Regulations, 2010 (hereinafter referred to as RPO Regulations) provides that the State Commission shall designate an agency

as State Agency which shall submit quarterly status to the State Commission in respect of Renewable Purchase Obligation by the Obligated entities and may suggest appropriate action for compliance of the RPO Obligation. The State Commission has notified Gujarat Energy Development Agency (GEDA) as the State Agency for the said purpose.

21. However, as evident from the impugned order the distribution licensees had not submitted the details regarding RPO obligation for the periods FYs 2010-11, 2011-12 and the first quarter of FY 2012-13. Therefore, the State Commission decided to initiate *suo motu* proceedings and issued notices to the distribution licensees. Thus, the main purpose for initiating the *suo motu* proceeding as appears from the impugned order was to verify the compliance of the RPO obligations by the distribution licensees. However, the State

- Commission also analyzed the reason for non-compliance of the RPO and decided to relax RPOs for FY 2010-11 and carry forward the shortfall in procurement of renewable energy from FY 2011-13 to FY 2012-13. The State Commission also decided that any excess procurement of solar energy can be considered towards fulfillment of total RPO requirement due to shortfall in wind and other sources of energy.
22. Regulation 4.2 of the RPO Regulations provides that the State Commission may, *suo motu* or at the request of a licensee revise the percentage targets for a year keeping in view supply constrains or other factor beyond the control of licensee. There is no specific provision regarding public notice in these Regulations.
23. Regulation 7 of RPO Regulations provides for inclusion of estimation of the Renewable Energy Purchase in the tariff/annual performance review petition as under:

“7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/ annual performance review petition in accordance with Regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations of the approved power purchase quantity for the ensuing year(s). In the event of the actual consumption in the license area being different from that approved by the Commission, the RPO shall be deemed to have been modified in accordance with clause 4.1. If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.

7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it

shall be liable to pay compensation as per clause 9 of these Regulations.”

24. According to Regulation 7.1, the distribution licensees have to indicate along with proof, the estimated quantum of purchase from renewable energy sources for the ensuing year in Tariff/APR petition. The Tariff/Annual Performance Review Petition is mandatorily subjected to public notice and public hearing under Section 64 of the Electricity Act. Thus, in the RPO Regulations there is an inbuilt mechanism for planning and review of RPO being subjected to public hearing. The distribution licensees have to indicate the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff petition and the review of RPO in the APR review which is also a part of the petition. The stakeholders can file suggestions and objections regarding the proposal of the licensee for the ensuing year and in APR review. This mechanism

- would ensure that the State Commission after considering the suggestions and objections of stakeholders could give directions to the distribution licensees for corrective action, if any, at the beginning of the ensuing year.
25. Regulation 9 of the RPO Regulations provides for consequences of default. According to Regulation 9, if the distribution licensee and other obligated entities do not fulfil the specified RPO obligation during a year and do not purchase the Renewable Energy Certificates, the State Commission may direct the licensee/obligated entity to deposit in a separate account such amount as determined by the State Commission which shall be utilized for the purpose laid down in the Regulations. However, in case of genuine difficulty in complying with the RPO obligations because of non-availability of power from renewable energy source or the RECs, the

State Commission on application of the distribution licensee/obligated entity can carry forward the compliance requirement.

26. The question that would arise is “whether the State Commission should issue public notice while considering the supply constraints or other factors beyond the control of the distribution licensee in meeting the specified RPOs and deciding the action for non-compliance in a *suo motu* proceeding or on petition filed by a party?”

27. In the Business of Conduct Regulations, 2004, Clause 24 is set out as under:

“24. The notice of the initiation of the proceedings may be issued by the Commission, and the Commission may give such orders and directions as may be deemed necessary, for services of notices to the affected parties, the filing of Reply in opposition or in support of the Petition in such form as it may direct.

The Commission may, if it considers appropriate, issue orders for publication of the Petition and/or Reply inviting comments on the issues involved in the proceedings in such form as the Commission may direct”.

Thus, the State Commission has discretion to order issuance of public notice in a proceeding. Even though the State Commission has discretion to issue public notice in a hearing, the discretion cannot be exercised arbitrarily and has to be in consonance to provisions of the Act and the Regulations.

28. Since the present case is the first *suo motu* review of compliance of the RPO obligations after the notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice for such reviews in the RPO Regulations, we do not propose to hold that the absence of public notice in the

suo motu proceeding was illegal. However, we would like to give directions for future for such proceedings.

29. There is a growing public concern about the CO₂ emissions caused by generation of power from the conventional sources and its adverse impact on the environment. At the same time, public is also concerned about cost of renewable sources of energy to replace part of energy from conventional sources as the impact of the high cost of renewable sources of energy has to be borne by them in the form of retail supply tariff. The Preamble of the Electricity Act, 2003 states that one of the objectives of the Act is promotion of environmentally benign policies. The Electricity Act, 2003 also mandates that the State Commission has to promote renewable sources of energy. Keeping in view the environmental concerns of the public, it would be prudent to seek suggestions and objections of the

- public in the proceedings where the State Commission reviews the RPO of the distribution licensees and passes orders on relaxation or carry forward of RPOs and default of distribution licensees in meeting the specified RPO targets.
30. As provided for under Regulation 7.1 of the RPO Regulations, the distribution licensee has to indicate alongwith sufficient proof thereof, the estimated quantum of purchase from the ensuing tariff/annual performance review petition. Such tariff petition has to mandatorily be published in the manner specified by the State Commission under Section 64 of the Electricity Act, 2003, to obtain the suggestions and objections from the public. The information about the actual consumption from the renewable sources against the RPO specified in the Regulations during the six months period of the current year and the review of RPO for current year in the APR petition has to also undergo

public hearing mandatorily. Therefore, in future the State Commission should consider the proposal of the licensee for compliance of the RPO obligations for the ensuing year in the Tariff Petition and review of RPO in Annual Performance Review proceedings to enable the public to offer their suggestions and objections. After completion of the financial year, the State Commission has to review the actual performance in respect of RPO and pass necessary direction as per the Regulation either *suo motu* or on a petition filed by a party. Such review should be subjected to public notice to invite suggestions and objections of all the stakeholders. Thus, in separate proceeding for annual review of RPO or otherwise by the State Commission either *suo motu* or on application from a party, the suggestions and objections of the public should be invited. Accordingly, directed for future.

31. **The third, fourth and fifth issues are interconnected and are being dealt with together.**
32. Let us examine the RPO Regulations, 2010.
33. The minimum quantum of purchase from renewable energy sources have been specified in the RPO Regulations as under:

“Table 1

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
(1)	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5%	0.5%	0.5%
2012-13	7%	5.5%	1%	0.5%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.”

The RPO Regulations specify the minimum quantum of purchase from wind, solar and biomass, bagasse & others and the total RPOs for the FYs 2010-11, 2011-12 and 2012-13. However, if the minimum quantum of power purchase from solar and other renewable sources is not available in a particular year, then the additional energy from wind and other energy could be procured over and above their respective RPOs. Thus, shortfall in solar energy can be made good from additional energy procured from wind but vice-versa i.e. making up shortfall in wind and other energy from solar energy has not been provided for.

34. Regulation 4.2 stipulates that the State Commission may *suo motu* or at the request of the licensee, revise the percentage targets for a year keeping in view the

supply constraints or other factors beyond the control of the licensee.

35. Regulation 5 provides for Renewable Energy Certificates as under:

“5. Certificates under the Regulations of the Central Commission

5.1 Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission’s (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and

the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfillment of the RPO in accordance with Table 1.

5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfillment of the Renewable Purchase Obligation under these Regulations.

5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated

entities with the Commission within 15 days of the purchase.”

36. Thus, REC issued under the Central Commission's Regulation has been recognized as a valid instrument for discharge of the mandatory RPO. RPO for renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase solar energy by solar certificates only. However, in case solar energy certificates are not available then in such cases additional non-solar certificates can be purchased for fulfilling the Solar RPO.

37. The consequences of default have been specified under Regulation 9 which is reproduced below:

9. Consequences of default

9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.

Provided that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the

extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided also that the distribution licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.”

38. Thus, in terms of Regulation 9, the State Commission may direct the distribution licensees/other obligated entities to deposit into a separate fund such amount as

determined by the State Commission on the basis of the shortfall in RPO energy and forbearance price decided by the Central Commission which shall be utilized by the State Commission for purchase of REC and for development of transmission infrastructure for evacuation of power from renewable sources of energy. However, in case of any genuine difficulty in meeting RPO due to non-availability of power from renewable sources or the REC, the State Commission may carry forward the shortfall to the next year.

39. The scheme of RPO under the RPO Regulations 2010 as applicable to the distribution licensees is summarized as under:
- i) The distribution licensees shall purchase electricity from renewable energy sources at a specified minimum percentage of total consumption of consumers including T&D loss during a year.

- ii) The minimum quantum energy in percentage from Wind, Solar, Biomass/bagasse & others and the total percentage for FYs 2010-11, 2011-12 & 2012-13 have been specified in the Regulations. In case minimum quantity of energy from solar and other renewable energy sources is not available in a particular year, then the shortfall can be made good by utilizing additional energy from wind or other energy sources.
- iii) The State Commission has power to revise the percentage targets for a year keeping in view supply constraints or other factors beyond the control of the licensee *suo motu* or on request by the licensee.
- iv) Renewable Energy Certificate shall be the valid instrument for discharge of mandatory Renewable Purchase obligations set out in the Regulations.
- v) Purchase of non-solar certificate shall be utilized for meeting obligation from renewable energy other than solar and solar certificate shall be used for meeting the

- solar obligation. Only if solar certificates are not available in a particular year then additional non-solar certificates can be purchased for fulfillment of the specified Solar RPO.
- vi) Each distribution licensee shall indicate with proof the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/APR Petition. The estimated quantum shall be in accordance with the specified RPOs. If the actual consumption is different from that approved by the State Commission, the RPO shall be deemed to be modified accordingly. If the distribution licensee is unable to fulfil the obligation, the shortfall of that year would be added to the specified quantum for the next year. However, credit for excess purchase would not be adjusted in the ensuing year.
- vii) Despite availability of renewable energy sources if the distribution licensee fails to purchase energy from

- renewable energy sources, then it shall be liable to pay compensation as per clause 9 of the Regulations.
- viii) If the distribution licensee does not fulfil the RPO as specified in the Regulations and also does not purchase certificates, the State Commission may direct the licensee to deposit into a separate fund such amount as determined by the State Commission. This fund shall be utilized by the State Commission partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy.
- ix) However, in case of any genuine difficulty in complying with the RPO due to non-availability of power from renewable energy sources or the RECs, the State Commission may carry forward the compliance requirement to next year and in that case payment of regulatory charges shall not be applicable.

40. Let us examine the findings of the State Commission in the impugned order. The relevant extracts are reproduced below:

“9.1 From the proceedings in the matter, it is observed that none of the respondents was able to meet the RPO percentage as decided by the Commission. It is also observed that the Commission had notified the RPO percentage for the FY 2009-10 as 2% which was increased to 5% within one year. The increase in RPO percentage was decided based on the potential of renewable energy sources in the State as well as in pursuance of the National Action Plan on Climate Change. However, due to increase in RPO percentage the requirement of procurement of energy from renewable sources increased substantially within a short period for the distribution licensees. Moreover, the addition in capacity in RE generation during the FY 2010-11 was also not adequate to meet with the demand of the distribution licensees. The REC mechanism was introduced for compliance of RPO during the month of October 2010 and the availability of the same was very less in the FY 2010-11. Regulation

4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulation, 2010 provides that the Commission may, suo-motu or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these regulations keeping in view supply constraints or other factors beyond the control of the licensees. Thus, the said regulation empowers the Commission to revise RPO percentage in case of supply constraint or factor beyond control of the licensees. The reasons attributed for non-compliance by the distribution licensees are beyond the control of the distribution licensees and seem to be genuine and justifiable. We, therefore, hold that the non-fulfillment of RPO by the distribution licensees for the FY 2010-11 was because of non-availability of power from RE sources and REC. In the above circumstances, we decide to revise the RPO for the FY 2010-11 from the level prescribed in the regulations to actual procurement of the renewable energy by the distribution licensees concerned.

9.2 So far as fulfillment of RPO for the FY 2011-12 is concerned, the respondent GUVNL and its subsidiary distribution licensees were unable to comply with RPO

specified by the Commission. It is also fact that the REC trading in the energy exchanges started during the FY 2011-12. Thus, an alternative mechanism of REC purchase for fulfillment of RPO was available to the distribution licensees and GUVNL from the FY 2011-12. However, the above respondents have not taken any initiative to purchase the REC and comply with the regulations notified by the Commission.

9.3 In case of TPL Ahmedabad and Surat distribution licensees, they have purchased renewable energy form the RE generators as well as purchased REC during the FY 2011-12 to comply with RPO as stated in table for RPO fulfillment by TPL for FY 2011-2012 in para-3 above. From the table, it appears that the TPL Ahmedabad and Surat have achieved the non-solar renewable purchase to the extent of 5.51% and 5.42% as against RPO requirement of 5.5% for non-solar RPO. As regards, solar RPO, the regulations stipulate 0.5% as the minimum quantum, to be procured from solar energy, of the total consumption of its consumers including T&D loss during a year 2011-12. However, the TPL Ahmedabad and Surat were not able to procure any energy from solar power generation. The

TPL has signed PPA for 50 MW solar Power project being set up by M/s kindle Engineering & Construction Pvt. Ltd., but the said project has not yet started operation, and as such TPL could not fulfill its solar RPO. Moreover, no solar RECs were available during FY 2011-12. Thus, the TPL has not complied with the RPO requirement of solar energy to that extent.

9.4 From the above it appears that the GUVNL and its subsidiary distribution licensees and TPL, Ahmedabad and Surat have not complied with the fulfillment of RPO requirement for FY 2011-12, though an alternative mechanism for fulfillment of RPO through REC was available. Regulation 9 of the GERC (Procurement of Energy from Renewable Sources) Regulations 2010, which is relevant in this case, reads as under:

.....

“The 5th proviso and 6th proviso of Regulation 9 provide that in case of any genuine difficulty by the distribution licensee in fulfillment of RPO, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year and in such case if the Commission consents to the same, no

regulatory charges shall be applicable. In the present case, the suo-motu proceedings have been initiated by the Commission for verifying compliance with the Regulations. It is found that the GUVNL and its subsidiary distribution licensees and TPL, Ahmedabad and Surat have not been able to comply with the RPO for the FY 2011-12. Non-compliance was primarily due to non-availability of RE power. Though the REC mechanism has been introduced to meet such contingency, availability of RECs was also not adequate. Further, no solar REC was available during the F.Y 2011-12. We, therefore, decide to carry forward the shortfall in procurement of renewable energy during FY 2011-13 by the aforesaid entities to FY 2012-2013.”

“9.5 The GUVNL submitted that the GUVNL and its subsidiary distribution licensees will procure the renewable power from solar energy more than the quantum required for fulfillment of RPO. The excess power procured from solar energy sources may be allowed for fulfillment of RPO against the shortfall in RPO percentage of wind, biomass, bagasse, and other sources. In this regard, it is necessary to refer to relevant Regulation 4.1 of GERC (Procurement of

Energy from Renewable Sources) Regulations, 2010, which reads as under:

.....

“The aforesaid provision provides that in case of shortfall in RPO of solar energy the additional renewable energy purchased from wind, biomass, Bagasse, and other sources shall be utilized for fulfillment of total RPO requirement. The above Regulation is silent about adjustment of excess energy purchased from solar energy during the year be considered for fulfillment of RPO specified for wind and other energy. We note that the cost of procurement of solar energy is higher than that of other sources of renewable energy. If such excess energy procurement from solar energy is not allowed to be adjusted against the fulfillment of shortfall of RPO of wind and other sources based energy, such shortfall will be required to be fulfill through non-solar REC from the energy market and the same will be additional burden on the distribution licensee and consumers. Any excess procurement of solar energy by the distribution licensees for promotion of solar technology can, therefore, be considered towards fulfillment of total

RPO requirement due to shortfall in RPO of wind and other sources of energy. We, therefore, decide that the excess energy, if any, procured by the distribution licensees from solar energy projects during the FY 2012-13 may be adjusted against the total RPO requirement during the year”.

41. The main reasons considered by the State Commission for non-fulfillment of RPO during 2009-10 were:

- (i) Substantial increase (from 2% to 5%) in RPO percentage from 2009-10 to 2010-11;
- (ii) Addition in Renewable Energy during 2010-11 was inadequate and, therefore, availability from renewable sources of energy was inadequate.
- (iii) REC mechanism was introduced for compliance of RPO during October 2010 and its availability during 2010-11 was very less.

The State Commission held that the reasons attributable for non-compliance by the distribution licensee during FY 2010-11 were beyond their control

and, therefore, the State Commission in exercise of its power under Regulation 4.2 revised the RPO for the FY 2010-11 from the level prescribed in the Regulations to actual procurement.

42. The State Commission found that for FY 2011-12 also the distribution licensee were unable to comply with the specified RPO due to non-availability of renewable energy. However, the distribution licensees did not take any initiative to purchase the REC. Only Torrent Power Ltd., Ahmedabad and Surat distribution licensees purchased energy from RE generator as well as purchased REC to fulfil their RPOs. The State Commission also held that the availability of REC was inadequate and decided to carry forward the shortfall in procurement of renewable energy during FY 2011-13 to FY 2012-13. Thus during 2012-13 the distribution licensees will have to meet the RPOs

- specified for FY 2012-13 plus the shortfall of FY 2011-12. However, the State Commission has not given basis of coming to conclusion that availability of REC during FY 2011-12 was inadequate.
43. The State Commission on the request of GUVNL also decided that any excess procurement of solar energy by the distribution licensees for promotion of solar technology will be considered towards fulfillment of total RPO requirement due to shortfall in RPO of wind and other sources of energy during the FY 2012-13. This was decided to avoid additional financial burden on the distribution licensees and consumers.
44. In light of the RPO Regulations let us see if the State Commission was correct in allowing relaxations in RPO.

45. As far as FY 2010-11 is concerned, the State Commission has given following reasons for relaxing the RPOs to actuals:

- i) RPO percentage was increased from 2% in FY 2009-10 to 5% in FY 2010-11.
- ii) Addition in RE capacity during FY 2010-11 was inadequate to meet the demand of the distribution licensees.
- iii) REC mechanism was introduced during October 2010 and its availability during FY 2010-11 was very less.
- iv) The reasons attributed to non-compliance by the distribution licensees was beyond their control.

Accordingly, the State Commission relaxed the RPO for the FY 2010-11 by exercising its power under clause 4.2 of the RPO Regulations.

46. The State Commission has given reasons for coming to the conclusion that the RPO could not be fulfilled by the distribution licensees due to supply constraints. We notice that the RPO Regulations 2010 were notified on 17.4.2010. The RPO for FY 2010-11 was more than doubled (2% to 5%) from the previous year. We feel that adequate notice was not available to the distribution licensee to tie up supplies with renewable energy developers to meet the substantial increase in the RPO specified for FY 2010-11. There is a gestation period for development of renewable energy projects. The alternative mechanism of REC was introduced only in October 2010 and therefore, the REC availability was also limited. Hence, we feel that the State Commission has correctly allowed the relaxation in view of the circumstances of the case which were beyond the control of the distribution licensees. The State Commission has powers to revise the RPO targets

under clause 4.2 of the RPO Regulations keeping in view the supply constraints and other factors beyond the control of the distribution licensee. Thus, we do not find any infirmity in the order of the State Commission regarding revision of RPO targets during FY 2010-11.

47. For FY 2011-12, while TPL, Ahmedabad and Surat distribution licensee fulfilled their non-solar RPO by purchasing renewable energy as well as REC, other distribution licensees failed to do so. It was noticed by the State Commission that GUVNL and its subsidiary distribution licensees did not take initiative to purchase REC and comply with the Regulations. At the same time the State Commission also held that though REC mechanism had been introduced the availability of REC was not adequate. In view of inadequate availability of renewable energy and REC, the State Commission

allowed carry forward of the shortfall for FY 2011-12 to FY 2012-13.

48. We find that the State Commission under fifth proviso to Regulation 9.1 is empowered to allow carry forward of REC in case of any genuine difficulty due to non-availability of power from renewable energy sources or the REC.
49. According to the Respondents, the REC mechanism was introduced for fulfillment of RPO for the States which do not have sufficient renewable energy resources. The State of Gujarat has abundant renewable resources, but despite this, the wind energy capacity addition in FY 2011-12 has been on the lower side as compared to the past years. The wind energy generators did not offer wind power at preferential tariff determined by the State Commission to enable the respondents to fulfil the specified RPO but wanted to

sell REC to make more profit. No wind generator has complained that they have offered their energy at preferential tariff determined by the State Commission and it has not been accepted by the distribution licensees.

50. Based on the submissions placed before us, we cannot hold that the GUVNL and its subsidiary distribution licensees have not made efforts as far as procurement of renewable energy from the renewable energy generators is concerned. However, there is clear finding of the State Commission that GUVNL and its subsidiary distribution licensees did not make any efforts to purchase REC which is an alternative mechanism for fulfilling the RPOs as per the Regulations. On the other hand, Torrent Ahmedabad and Surat distribution licensees have been able to purchase REC to meet their shortfall in non-solar purchase obligation.

51. We find from the market data of REC for FY 2011-12 submitted by the Appellant that quantum of non-solar energy certificates by the sellers of REC was more than the volume cleared in the exchanges. It is also seen that for 10 months during 2011-12, the buy bids were much more than the sell bids despite which the full volumes of sell bids could not be traded. This may presumably be due to the buy bids being lower than the clearing price of REC.

52. According to the Appellant, if the distribution licensees had placed their buying bids close to or equal to forbearance price, they would have been able to procure REC certificate. We, however, feel that the price at which the distribution licensees want to purchase REC to meet shortfall in RPO is its own commercial decision and this Tribunal cannot dictate the bid price for REC by the distribution licensee. However, the fact remains that GUVNL and its

subsidiary distribution licensee did not make any attempt to purchase any REC during 2011-12 to meet their shortfall in RPO as per the alternate mechanism specified for in the Regulations for fulfilling their RPOs. 5th proviso to Regulation 9.1 provides that the distribution licensees in case of genuine difficulty in complying with the RPO because of non-availability of renewable energy or the RECs can approach the State Commission to carry forward the compliance requirement to the next year. Thus non-availability of REC is also a condition to be satisfied before allowing carry forward of RPO.

53. According to the Respondents, they cannot be forced to purchase REC when the State has adequate renewable energy sources. It cannot be disputed that the distribution licensees have to set their priority for meeting RPO. If they want to procure renewable energy to meet their RPO targets as the State is endowed with

adequate renewable energy sources, we cannot find fault with that approach. However, if a distribution licensee is not able to make arrangements to procure adequate renewable energy, then it has to resort to the alternate mechanism of REC as specified in the Regulations, to meet the shortfall in REC. REC has been recognized in the RPO Regulation as an alternate mechanism to meet the shortfall in RPO. According to the Regulations, the carry forward of RPO is permissible if there is genuine difficulty due to non-availability of renewable energy or REC. Thus, carry forward of the shortfall in RPO to the next year should be allowed if the distribution licensee despite making efforts to procure renewable energy and purchase REC could not meet the RPO target. Admittedly, some of the distribution licensees did not make any efforts to purchase REC.

54. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand it has decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it has held that adequate RECs were not available. No reasons have been adduced to come to conclusion that adequate REC were not available.

55. FYs 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during

2011-12 to 2012-13, the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We would, however, give guidelines to the State Commission for future as under:

- (A) The State Commission may decide the RPO targets at least one year before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter into PPAs with the renewable energy project developers.
- (B) The proposal for renewable energy procurement should be submitted by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year. Suggestion and objections of public have to be invited for the above petition. The State Commission may give necessary directions

- with regard to RPO after considering the suggestions and objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPO target, it should plan purchase of REC. Advance planning of REC purchase will give ample opportunity to the distribution licensees to purchase REC when the market conditions are more favourable to them.
- (C) After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations. Suggestions and objections of the public should be invited in the review proceedings.
- (D) The State Commission should give directions regarding relaxation in RPO and consequential order for default of the distribution licensees as per the RPO Regulations. Accordingly, directed for future.

56. The fifth issue is regarding adjustment of excess solar energy procured against shortfall in non-solar energy RPO during FY 2012-13.

57. According to the Respondent no.3 (GUVNL), the power from wind power project was not-available, even though the Respondent no.3 and the State utilities tied up entire capacity of renewable energy sources i.e. whosoever came forward to sign the PPA.

58. The State Commission has allowed excess procurement of solar energy by the distribution licensees towards fulfillment of total RPO requirement due to shortfall in RPO of wind and other sources of energy during FY 2012-13.

59. The reasons given by the State Commission for allowing above dispensation are:

- i) The Regulation provides that in case of shortfall of RPO of solar energy, additional energy from wind, biomass, bagasse and other sources can be utilized for fulfillment of RPO requirement. However, the Regulation is silent about adjustment of excess solar energy purchased against the shortfall of RPO for wind and other energy.
- ii) Cost of procurement of solar energy is higher than other sources of renewable energy. If the excess energy procurement from solar energy is not allowed to be adjusted against the fulfillment of shortfall of RPO for wind and other energy, such shortfall will be required to be fulfilled through purchase of non-solar REC which will be additional burden on the consumers.
- iii) Excess procurement of solar energy by the distribution licensees for promotion of solar technology can, therefore, be considered towards fulfillment of non-solar RPO.

60. We find that the Regulation 4.1 only provides that shortfall in RPO for solar and other renewable energy sources can be made good by additional wind or other energy. However, the Regulation is silent about making good the shortfall in wind and other energy by procuring additional energy from solar which may be due to higher price of solar energy. However, we feel that keeping in view the circumstances of the case, the State Commission can exercise its powers under Regulation 4.2 to allow adjustment of excess solar energy procured for meeting the shortfall in non-solar RPO.

61. In the present case we find that GUVNL in order to promote solar technology has tied up more solar capacity than required for meeting the solar RPO. As pointed out by the distribution licensees, the Wind Energy generators in the State did not come forward to enter into PPA for supply of energy at the preferential

tariff determined by the State Commission and preferred supply of energy to others and sell REC in the market. We agree with the State Commission that if the adjustment of excess solar energy is not permitted it would require purchase of non-solar REC from the market which will result in additional financial burden on the distribution licensees and the consumers. The State Commission under Regulation 4.2 is empowered to revise the percentage of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.

62. In the present case, in order to promote solar technology and in view of wind energy generators not coming forward to enter into PPA for supply of wind energy to the distribution licensees, they have entered into PPAs with solar generators for a capacity higher than required for meeting the solar RPO. If under these circumstances, the State Commission, in order to avoid

additional financial burden of purchasing non-solar REC on the distribution licensee and the consumers, has allowed to meet non-solar RPO by additional energy procured from solar projects, there is no infirmity in the same. There is no illegality in the State Commission exercising its powers under Regulation 4.2 for such adjustment in the circumstances of the case. Accordingly, we reject the contention of the Appellant with regard to adjustment of excess solar energy against the non-solar RPO.

63. Summary of our findings:

- i) Appeal filed by the association of wind energy project developers against the impugned order of the State Commission allowing relaxation in Renewable Purchase obligation of the distribution licensees is maintainable.**
- ii) Since the present case is the first suo motu review of compliance of the RPO obligations after the**

notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice for such reviews, we do not want to hold that the absence of public notice in the *suo motu* proceeding was illegal. However, we feel that in the proceedings before the State Commission either *suo motu* or on a petition by a party, regarding review of RPOs in which consequential directions for relaxation or carry forward of RPO or creation of regulatory fund are given, public notice inviting suggestions and objections of the stakeholders is necessary. We have given some directions for future under paragraphs 29 and 30.

iii) We do not find any infirmity in the State Commission revising the RPO for FY 2010-11 by exercising its power under Regulation 4.2 of the RPO Regulations, 2010, in view of the reasons beyond the control of the distribution licensees.

(iv) We do not see any infirmity in the distribution licensee setting priority to procure renewable energy by entering into PPAs with the renewable energy generators to meet their RPO targets when the State is endowed with adequate renewable energy sources. However, if the distribution licensees are not able to make arrangements to procure adequate renewable energy to meet the RPO targets, then they have to resort to alternate mechanism of REC specified in the Regulations to meet the shortfall in RPO. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand, it decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it held that adequate REC were not available. No reason was

given to come to conclusion that adequate REC were not available.

- v) FY 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during 2011-12 to 2012-13 the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We have, however, given some guidelines to the State

Commission for future under paragraph 55(A) to (D).

vi) We do not find any infirmity in the State Commission exercising its powers under Regulation 4.2 for adjustment of excess solar energy procured against non-solar RPO in the circumstances of the present case.

64. In view of above, the Appeal is partly allowed to the extent as indicated above. We have also given some directions/guidelines to the State Commission to be followed in future. No order as to cost.

65. Pronounced in the open court on this 25th day of April, 2014.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE

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